

REMARKS

The application now comprises claims 1-7. Non-elected Claims 8-14 were previously cancelled without prejudice to pursuing those claims in a division or continuation-in-part application. This is in response to the Final Rejection of claims 1-7 dated July 6, 2007, the shortened period for response thereto expiring October 6, 2007. It is respectfully submitted that the final rejection of claims 1-7 based on newly cited art is premature and it is requested that the finality of said rejection be withdrawn.

Claims 1-3 and 5-7 were rejected under 35USC 102 (e) as being anticipated by Levchin et al. (US 7,089,208). Levchin was filed April 28, 2000 claiming benefit of three Provisional Applications, 60/172,311, filed Dec 17, 1999, 60/144,633 filed July 19, 1999 and 60/131,785 filed April 30, 1999. Applicant's application was filed June 25, 2001, claiming benefit of Provisional Application 60/214,166 filed June 26, 2000, said Provisional being exactly the same as applicant's Disclosure Document No 459,528 filed July 23, 1999. It is respectfully submitted that the Levchin patent does not have benefit of the April 30, 1999, July 19, 1999 or the December 17, 1999 filing dates of the Provisional Applications as none of these applications are enabling disclosures regarding the portions of the '208 patent cited against applicant's claims. Accordingly, in regard to the claim-by-claim analysis below, because the cited portions of the Levchin patent do not have adequate support in the Provisionals, the earliest date that can be attributed to Levchin as a prior art reference under 102(e) is April 28, 2000. In contrast thereto, applicant's Provisional Application 60/214,166 filed June 26, 2000 (which is the same as Disclosure Document No 459,528 filed July 23, 1999) fully supports applicant's claims. The Levchin Provisionals

60/131,785 filed April 30, 1999 provides a four (4) page description, with nine (9) hand drawn figures, directed to payment software which must be loaded on each user's computer. Once installed the software allows a first party to interact with a second party having the same software installed through an intermediate computer server (i.e., a peer-to-peer payment system) transferring the payment from the first users credit card account to the second users credit card account.

60/144,633 filed July 19, 1999 is the same as the '785 Provisional except for the addition of a 5th page of description which discloses the use of the internet to effect the same funds transfer.

60/172,311, filed December, 17, 1999 is the same as the '633 Provisional with the exception of a 173 page Appendix entitled "PayPal – System Design " The Appendix is a detailed operating manual for the prior described credit card payment system where each user uses a handheld information entry device such as a PALM device with the PayPal software installed so that funds can be transferred to a second party identified by that parties email address. The system described in the '311 Provisional, which is the most complete presentation of the Levchin system as it existed prior to the filing of the '208 patent application, is totally different from applicant's system, does not show or suggest the features set forth in applicant's claims and does not provide support for the portions of Levchin '208 cited against applicant's claims. While the Levchin '208 filing date was prior to the filing of applicant's Provisional application by two (2) months, for 102(e) purposes the '208 patent can not be accorded the benefit of the filing date of any of the Levchin Provisionals as those Provisionals are not enabling of applicant's claims and can not be found to anticipate applicant's invention. "To serve as an anticipating reference, the reference must enable that which it is asserted to anticipate" Elan Pharm., Inc v Mayo Found. for Med. Educ. & Research, 346F.3d 1051, 1054 (Fed. Cir. 2003). The Levchin Provisionals describe a different invention; they fail to enable the applicant's claimed invention.

Claim 1 was rejected under 35USC102(e) as being anticipated by Levchin et al in that Levchin teaches an electronic funds transfer system in that

"a central controller CPU in electronic communication over the Internet with system users and participating banks, said central controller CPU accessible by one or more system users engaged in a funds transfer transaction, the CPU programmed to process the on-line transaction, monitor on-line electronic funds transfers and to function as a conduit for processing the transaction between system users"(Claim 1, sect. a) is shown at Col 1, lines 44-61 and in Fig 1.

"means at each participating bank, in communication with the central controller CPU, for buyers and sellers of goods or services to establish electronic funds accounts linked to demand deposit accounts in said participating banks" (Claim 1, sect. b) is shown at col.2, lines 5-16,

"wherein electronic representations of currency purchased by said buyers from demand deposit accounts in said participating banks are deposited in said buyer's electronic funds account, said electronic representations of currency having an original monetary value tied to a selected actual currency" (Claim 1, sect. b) is shown at col. 4, lines 28-41, "a transaction processor module associated with said central controller CPU for processing interactive letters of credit, establishing and releasing, encumbrances on electronic funds deposited in said electronics funds accounts as financial transactions are entered into and consummated, said transaction processor module acting on instructions from a first system user to pay identified obligations to another user of said electronic funds transfer system" is shown at col 12, lines 19-35,

"a central controller storage module associated with the central controller CPU capable of storing information regarding all electronic on-line transactions between the buyers, sellers and the participating banks" is shown at Col 2, lines 8-12,

"said central controller CPU being programmed to automatically balance electronic funds with their corresponding bank reserves throughout the system on a selected periodic basis" is shown at Col 2, line 66 – col. 3, line 3 and col. 9, lines 52-53,

"and, on a selected periodic basis, issue reports of the status of such transactions, wherein the buyer in each transaction has control over the specification of electronic funds to be encumbered, the funds once encumbered being restricted from access by the buyer with the exception of release to the seller, unless released back to buyer by seller" is shown at col 12, lines 19-35.

In regard to claim 1, sect. a) it is acknowledged that Levchin uses a CPU. However, the Levchin CPU as explained below serves a different purpose and functions in a distinctly different manner. While the end result in Levchin may be the transfer of some form of compensation from a first party to a second party in exchange for goods or services provided by

the second party the manner of accomplishing that exchange is totally different from applicant's system and does not show or suggest applicant's claimed system. A first basic difference between Levchin and applicant's invention is that Levchin operates with numerous different "value units", for example any number of different monetary forms (Levchin suggests US Dollars but contemplates other currencies, i.e., Euros, Pounds, Yen, etc) or some other form of value such as credits, affinity points, frequent flier miles, vouchers, barter points, etc. (Col 2, lines 36-44). This complicates the exchange as the buyer and seller must first agree on the value to be attributed to "value units" or if different currencies are used, the exchange rate to be applied at the time of the transaction. This is set forth in Levchin, Col 4, lines 31-34 where it is stated that a monetary amount or a credit or voucher held by a first user must first be accepted by a second user. The CPU then serves as an escrow agent to hold the agreed to "value unit" for the buyer until the buyer receives the goods or services. In contrast thereto, applicant's claimed invention operates with only a single defined electronic representation of currency, referred to as Cyber Credits or CC Money. All users of the system first establish Cyber Money accounts at their respective bank or financial institution. Transactions are all conducted in CC Money. A unit of CC Money has the same value anywhere in the World (like the US dollar which has the same value anywhere in the US) and therefore the buyer and seller each know the value of the payment unit being offered. Seller establishes a price in CC Money and buyer pays with CC Money or Buyer makes an offer in CC Money so that seller immediately knows the value offered and can accept or counter the offer. This greatly simplifies the transaction. Levchin does not show or suggest the use of a single defined electronic representation of currency as set forth in amended claim 1 and therefore can not show applicant's claimed invention. In addition, Levchin does not show or suggest an electronic representations of currency having an original monetary value tied to a selected actual currency. In fact Levchin, at Col 4, lines 24-41, suggest the opposite. He states that "the value may change from one currency to another or from being monetary in nature to being represented by credits with a merchant, frequent flyer miles or some other values."

In regard to Claim 1, section (c), Levchin, at col 12, lines 19-35, does not describe or suggest the claimed transaction processor module for processing the exchange transaction. This portion of Levchin describes an escrow function, often referred to as a "trusted agent" that holds

the buyers "value" until released by buyer. In contrast thereto, applicant's transaction processor acts as a data processing unit (i.e., an accounting or bookkeeping tool) which sends instructions to buyer's electronic funds account located at buyer's financial institution to encumber the designated amount of CC Money and seller's electronic funds account located at seller's financial institution or such other electronic funds account (possibly that of a third party) as is designated by seller is credited with the payment. Funds never pass through the CPU. The funds move from the CCMoney account at buyers bank to the CCMoney account at sellers bank (i.e., a bank to bank transaction).

In regard to claim 1, section d) in applicant's system each user's CCMoney account is maintained at the user's own banking institution and the CPU monitors, tracks and records (a bookkeeping function) the transfer of the amount of CCMoney for the transaction with the central-controller storage module storing the information regarding the transactions. In contrast thereto, Levchin, as set forth at col 2, lines 5- 16, and particularly at lines 8-11, requires the users to establish their accounts at the CPU which then receives funds from the bank, stores the account information and handles credit and debiting from those accounts. Levchin col 2, line 66 – col 3, line 3 has no relevance at all to this claimed feature; likewise col 9, lines 52-53 is directed to synchronization between a users portable data entry device and the CPU and has nothing to do with the CPU corresponding with the bank reserves. Still further, in applicant's system the funds being transferred remain in the buyer's account at the buyer participating bank but are encumbered until transferred. Levchin col 12, lines 19-35 describes removing the funds from buyer's bank or other institution, holding the value being offered and placing those funds with an escrow agent for later transfer to seller or back to the source of the funds if the transaction is cancelled.

The Levchin CPU does not automatically balance electronic funds with the corresponding bank reserves as the funds have all been transferred from those banks to the exchange system. No bank reserves exist in the Levchin system.

In regard to claim 2 the examiner contends that Levchin teaches "a new account module in communication with the central controller CPU, said new account module accessible by system users over the Internet, for qualifying new users and recording initial electronic

representations of currency reserves deposited in support of electronic funds accounts at said participating bank" at Col.1 lines 44-60, col 2, lines 36-44, col 15, lines 9-67 and in the Abstract. The arguments set forth above are reasserted. While the cited sections do disclose means by which new users can register and open accounts, the accounts in Levchin require funds be removed from the user's banking institution and be transferred to the escrow holder. The cited sections do not show or suggest the claimed features. Col.1 lines 44-60 addresses how the users access the system (i.e., handheld devices computers, telephone, etc.) and that the system adjusts the user's account balance, however, it does not discuss the location of that account balance. Col 2, lines 36-44 addresses the different types of value units which may be transferred. Col 15, lines 9-67 addresses registering users with the system. The Abstract indicates the inclusion of "a financial server for interacting with external financial institutions" but does not further define what is meant by "interacting". One must read the specification further to determine what this means. At Col 2, lines 5-8 Levchin explains this to mean that "a financial server interacts with other system servers and external financial institutions to enable a user to inject value into the system and withdraw value from the system". This is a function opposite of that employed by applicant. The Levchin financial server functions to remove funds from participant's bank accounts, charge accounts or other sources external of the system to cover the transaction. Levchin excludes the participating bank from the exchange transaction. In contrast thereto, in applicant's system the participating banks remain a part of the system. The new account module just records electronic funds available (an accounting function) at the participating banks, the electronic funds remain at the participating bank and are credited or debited between the party's CCMoney accounts at each party's participating bank. Accordingly Levchin does not anticipate the invention of claim 1 as limited by claim 2.

In regard to claim 3 the examiner contends that Levchin teaches "voice or video communications between system users and the central controller CPU" at Col 1, lines 51-55. The arguments set forth above are reasserted. It is acknowledged that Levchin teaches the user's communication with the CPU. However, that communication is for a different purpose and implements an exchange transaction different from that set forth in claim 1. Accordingly Levchin does not anticipate the invention of claim 1 as limited by claim 3.

In regard to claim 5 the examiner contends that Levchin teaches "encryption, de-encryption and re-encrypting capabilities for recording and storing transaction records in a secure data storage facility, data stored for each transaction being accessible only by the participants of the transaction and an authorized operator of the electronic funds transfer system" at Col 6, lines 4-23. The arguments set forth above are reasserted. It is acknowledged that Levchin teaches encryption of information entered into the system by a user. However the cited passage does not suggest that the encrypted information is accessible by all of the participants to the transaction or the operator of the electronic funds transfer system. Access to that encrypted information by the system operator is important for applicant's dispute resolution mechanism to be functional. Accordingly Levchin does not anticipate the invention of claim 1 as limited by claim 5.

In regard to claim 6 the examiner contends that Levchin teaches that "the system is accessible by a buyer and seller communicating therewith over the Internet using the central controller CPU as an intermediary, the central controller CPU providing information services, a data link between users, a record of financial transactions, funds encumbrancing, encumbrances and un-encumbrancing and to reconcile funds transfers on completion of a transaction to the satisfaction of the buyer and seller" is shown in the Abstract and Figures. The arguments set forth above are reasserted. While Levchin may show some or all of these features, since Levchin operates in a totally different manner from applicant's claimed invention it does not anticipate the invention of claim 1 as limited by claim 6.

In regard to claim 7 the examiner contends that Levchin teaches "wherein electronic funds encumbered by a first buyer for the benefit of a first seller can be re-encumbered by said first seller for the benefit of one or more third parties to which said first seller owes a financial obligation, such that when the transaction between the first buyer and the first seller is completed and the encumbrance by the first buyer on first buyer funds is released, the released funds are automatically transferred, pursuant to instructions of first seller, to such one or more *second sellers or funds providers, and prior sellers to said second sellers as so instructed by such participants electronically within the system*" is shown at Col 1, lines 44-46 and col 7, lines 27-33. It is respectfully pointed out that the examiner's statement of claim 7 differs from applicant's claim 7 in that the portion set forth above in italics appears in claim 7 as now amended as "third

parties in accordance with instructions by such first seller electronically preestablished within the system." It is submitted that the examiners restatement of claim 7 changes the limitation as originally set forth by applicant in claim 7 and particularly claim 7 as now amended. In addition, it is submitted that Levchin does not anticipate either version of claim 7. The arguments set forth above are reasserted. The cited sections refers to "a value exchange between two or more persons using a distributed value exchange system" (col 1, Lines 44-46) This is further explained by col 7, lines 29-30 which refers to a transaction between two (or more) parties involved in the transaction. In contrast thereto claim 7 as amended provides for payment of the funds to a third party, designated by the third party. This third party is NOT a party to the transaction but may be, as explained in the specification at page 31, line 17 – Page 32, line 15, a party owed money by the seller such as a goods supplier, prior source of funds or some other third party beneficiary designated by the seller. Accordingly, Levchin does not anticipate the invention of claim 1 as limited by claim 7.

Accordingly Levchin does not anticipate claim 1 or any of claims 2-7 dependent thereon.

Claim 4 was rejected as obvious under 35USC 103(a) based on Levchin in light of Rosen US Patent 5,557,518. The examiner recognizes that Levchin does not show or suggest electronic or personal dispute resolution and customer support services and then contends that Rosen does teach dispute resolution at Col 2, lines 38-4, col 9, lines 41-43 and col 28, lines 39-67 and it would have been obvious to one skilled in the art to modify Levchin to include this step. The arguments set forth above are reasserted. In accordance with applicant's claims, any dispute resolution relates to the information entered into the central controller CPU. While Rosen addresses dispute resolution, it is in a totally different context and is an adversarial arrangement between the two separate bank electronic transfer systems and two separate trusted agents and not through a system with a Central Controller CPU accessed by both buyer and seller. Levchin and Rosen are incompatible. Levchin removes the banks from the transaction and uses a single trusted agent. Rosen requires two trusted agents at the bank level each one acting as an agent for its respective depositor in the transaction. Rosen is not combinable with Levchin without changing the system taught by Levchin. It would be an added feature for Levchin to include a dispute resolution mechanism. However, the suggestion of such an addition is based on

applicant's disclosure, and with that disclosure as hindsight, the examiner has identified in Rosen a totally incompatible means of providing that added feature.

Generally speaking the claimed invention is different from prior funds transfer systems in that it provides a central controller CPU which is accessed by the system users in order to consummate the funds transfer part of a business transaction. System users each first establish an electronic money account (a CC Money Account) at their respective participating banks directly or by using the Central Controller CPU. They can then enter into a transaction such as set forth in the specification at page 13, line 23 – page 20, line 14 and illustrated by Examples 1 and 2 and pages 20-22. Key to the claimed invention is that the system users that are parties to the transaction transact and consummate the funds transfer by each accessing the Central Controller CPU rather than each party communicating individually with their respective banks. However, also key to the system is that the users maintain their own CCMoney accounts at their respective participating bank and the CPU monitors and directs the transfers from buyers CCMoney account at buyers bank directly. Further, the CPU performs bookkeeping and accounting functions. It is not a conduit for funds.

In the previous amendment applicant made some clarifying amendments in response to '112 objections. No amendments were made to the claims to avoid the prior art references cited. The amendments were only clarifying in nature and to address typographical errors and as a result the scope of the claims were not changed so as to necessitate a new search. The examiner has now introduced new grounds for rejection that were not necessitated by applicant's amendments. The examiner could have and should have made any rejection based on Levchin as part of the prior Office Action as the currently existing claims are of substantially the same scope as the previously pending claims. The clarifying amendments to the claims do not, and can not present a new issue of patentability that did not previously exist. The issuance now of a final rejection and now first asserting Levchin has removed from applicant the opportunity to explain and distinguish over Levchin which is a reference of lesser relevance to the claims than the prior cited Rosen patents. Therefore, the Final Rejection is premature and must be withdrawn.

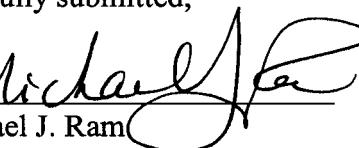
Application No. 09/891,828
Reply to Office Action of July 6, 2007
Docket No. 441-26-001

The examiner is reminded of the warning set forth in MPEP 707.07(g) regarding piecemeal examination. The examiner has an obligation in the first Office Action to reject the claims on "all valid grounds available". "The first search should cover the invention as described and claimed, including the inventive concepts toward which the claims appear to be directed." (MPEP 904). Based on a review of the prosecution history and the examiner's search record it appears that the examiner has in fact done a piecemeal search with the search prior to the first office action being limited to a classification search and only after the applicant presented arguments clearly distinguished over the Rosen references (the only prior art cited) did the examiner fully search the prior art by doing a text search in which the lesser relevant Levchin reference was located. Had the examiner initially done both a classification search and a text search, as recommended by MPEP 904.02, Levchin would have been located and that reference could have been applied to the claims in the first Office Action and both Rosen and Levchin would have been addressed and distinguished over by applicant in the first response.

Claims 1-7 remain in the application. It is respectfully submitted that these claims are patentable, fully supported by the Specification and not shown by the prior art. Further, the Final Rejection is premature and should be withdrawn so that applicant's response to the new basis for rejection set forth by the examiner, which was not necessitated by applicant's prior amendments of the claims, can be fully considered without the necessity of filing an RCE, Continuation application or Appeal. It is requested that the claims be found to be patentable and a Notice of Allowance be issued.

Respectfully submitted,

Date: September 24, 2007

By: 
Michael J. Ram
Registration No. 26,379
Attorney for Applicant

KOPPEL, PATRICK, HEYBL & DAWSON
555 St Charles Drive, Suite 107
Thousand Oaks, CA 91360
Phone (805) 373-0060
Fax (805) 373-0051